

## Message Text

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ACTION AF-04

INFO OCT-01 SS-14 ISO-00 EB-03 OPIC-02 IO-03 XMB-01 TRSE-00

COME-00 NSC-07 NSCE-00 CIAE-00 INR-10 NSAE-00 RSC-01

L-02 PRS-01 DRC-01 /050 W  
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R 081550Z APR 74

FM AMEMBASSY LUSAKA

TO SECSTATE WASHDC 9982

INFO USMISSION USUN NY

C O N F I D E N T I A L LUSAKA 0644

LIMDIS

EO 11652: GDS

TAGS: EFIN, EIND, ZA

SUBJECT: TAW

REF: (A) STATE 49728; (B) STATE 66126

1. SUMMARY. SINCE RETURN TO LUSAKA LAST WEEK, I HAVE BEEN MADE INCREASINGLY AWARE OF PREJUDICED LOCAL ATTITUDES WHICH HAVE DEVELOPED FOLLOWING GRZ CANCELLATION OF TAW CONTRACT AND EFFECTS WHICH THESE COULD HAVE ON US-GRZ COMMERCIAL RELATIONS, NOTWITHSTANDING PRIVATE DEMURRALS FROM TWO GRZ OFFICIALS. CRITICAL LOCAL VIEWS AGAINST TAW CONTRACT COULD ULTIMATELY EXTEND TO USG DUE TO EX-IM AND OPI INVOLVEMENT. REQUEST FURTHER DETAILED INFORMATION ON KEY PROVISIONS OF CONTRACT TO ASSIST IN EVALUATING VALIDITY OF AND DEALING WITH ADVERSE ATTITUDES BEFORE CONSIDERING POSSIBILITY OF ANY OFFICIAL USG APPROACH. END SUMMARY.

2. IT IS UNQUESTIONABLY PRUDENT FOR PRESENT TO KEEP OUR DISTANCE FROM PURELY COMMERICAL DISPUTE FOLLOWING CANCELLATION, AS INDICATED EARLIER BY DEPT IN REF A. BUT BECAUSE ZAMBIA GOVERNMENT IS ONE PARTY AND USG ENTITIES OPIC AND EX-IM BANK ARE INVOLVED BEHIND OTHER  
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PARTY TO DISPUTE WE CANNOT DETACH OURSELVES COMPLETELY OR

INDEFINITELY, NOR CAN WE REMAIN SILENT IN FACE OF LOCAL CRITICISM THAT TAW CONTRACT WAS: A) EXPLOITATIVE AND B) IN BAD FAITH ON DELIVERY DATES.

3. WHILE TWO CABINET MINISTERS (CHIKWANDA OF PLANNING AND FINANCE AND MWAANGA OF FOREIGN AFFAIRS) HAVE ATTEMPTED ASSURE US ZAMBIAN EXPERIENCE WITH TAW SHOULD HAVE NO ADVERSE EFFECT ON OUR TRADE AND INVESTMENT INTERESTS AND OPPORTUNITIES, WE ARE NOT COMPLETELY CONVINCED IN VIEW OF STRONG OPINIONS TO CONTRARY EXPRESSED IN INFLUENTIAL TRADE, BANKING AND INTELLECTUAL CIRCLES. MERE FACT OF TAW CONTRACT CANCELLATION COMING AFTER UNILATERAL GRZ CANCELLATION OF COPPER MANAGEMENT AND SALES CONTRACTS LAST AUGUST (STILL UNSETTLED) IS CAUSE FOR UNCERTAINTY ON PART OF OTHER US FIRMS REGARDING ZAMBIAN GOVERNMENT POLICY.

4. LOCAL CRITICS EITHER IGNORE THIS ASPECT OR FAIL TO APPRECIATE ITS SIGNIFICANCE. THEY FOCUS ON THEIR NARROW BELIEF THAT TAW CONTRACT WAS PROBABLY ADVANCED THROUGH BRIBERY ON TERMS WHICH TOOK ADVANTAGE OF INEXPERIENCED, DEVELOPING COUNTRY AND WAS THUS EXPLOITATIVE. THEY CONCLUDE THAT CANCELLATION "AT WHATEVER COST" WAS ONLY RIGHT COURSE IN CIRCUMSTANCES.

5. IF IT BECOMES GENERALLY KNOWN THAT OPIC AND EX-IM WERE SUPPORTIVE OF TAW CONTRACT, SOME OF THIS LOCAL CRITICISM COULD TURN AGAINST USG FOR BEING A PARTY TO CONTRACT BECAUSE OF UNFAVORABLE LIGHT IN WHICH LOCAL CRITICS SEE IT.

6. IN ATTEMPT TO MODERATE UNREASONABLENESS OF LOCAL POSITION AND UPHOLD GOOD NAME OF US BUSIENS, WOULD WELCOME FURTHR DETAILS FROM DEPT ON LEGAL ASPECTS OF CONTRACT, RECOGNIZING THAT IN LAST ANALYSIS CASE IS ONE FOR LEGAL PROFESSIONALS TO SORT OUT. FOR EXAMPLE, IS CONTRACT INDEED, AS TOM WOOD DEFENDS IT, A STANDARD ("BOILER PLATE") TYPE OF CONTRACT COMMON IN US FOR SUCH LEASING OPERATIONS? OR WERE THERE UNIQUE OR SPECIAL FEATURES FOR ZAMBIAN SITUATION? IS CONTRACT EVEN-HANDED, ESPECIALLY AS REGARDS PENALTIES FOR NON-COMPLIANCE? OR ARE PENALTIES HARSHER FOR GRZ THAN TAW? ONE CRITICISM HOLDS THAT

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CONTRACT TERMS RELATING TO GRZ PAYMENTS COMPLETELY IGNORE GRZ ACCOUNTING PROCEDURES AND COULD NOT HAVE BEEN FILLED UNDER BEST OF LOCAL BUREAUCRATIC CIRCUMSTANCES.

7. CHIKWANDA TOLD ME CONTRACT SIGNED AGAINST GRZ LEGAL ADVICE OF THEN SOLICITOR GENERAL SEBASTIAN ZULU WHO LEFT GOVERNMENT AND IS NOW TAW'S LOCAL LAWYER.

8. EMBASSY WOULD WELCOME MORE BACKGROUND INFORMATION SO AS BETTER TO UNDERSTAND AND APPRECIATE TERMS OF CONTRACT AND GROUNDS FOR OPIC AND EX-IM INVOLVEMENT. ONLY THEN WILL EMBASSY BE IN POSITION TO MAKE INFORMED JUDGMENT ON WHETHER SUGGESTION IN PARA 3 REFTEL B FOR POSSIBLE USG DEMARCHE IS IN BEST US INTERESTS.

9. IT IS NOT YET CLEAR WHETHER ARBITRATION BY INTERNATIONAL CHAMBER OF COMMERCE AT LONDON, OR GOOD OFFICES OF UN LEGAL AFFAIRS, OR SOME OTHER ARRANGEMENT WILL BE AGREED TO AS MEDIUM FOR SETTLEMENT OF TAW CLAIM AGAINST GRZ. UNDP RESREP (GILPIN) TELLS ME THAT FOLLOWING GRZ REQUEST FOR UN LEGAL HELP HE HAS ASKED GRZ FOR ALL RELEVANT DOCUMENTATION FOR LOCAL STUDY AND WILL RELY ON EXPERT LEGAL ASSISTANCE FROM UN HEADQUARTERS NEW YORK. WE ASSUME GRZ APPROACH TO UN DELIBERATELY MADE IN HOPES OF KEEPING DAMAGES TO MINIMUM.

10. IT IS WORTH RECALLING THAT GILPIN HAS FROM START BEEN HIGHLY CRITICAL OF WHAT HE CONSIDERED UNUSUAL BIAS OF CONTRACT IN TAW'S FAVOR. THIS CRITICISM HAS BEEN SHARED BY UN EXPATRIATE TEAM OF ADVISORS TO GRZ CONTINGENCY COMMITTEE (LARGELY CANADIAN AND YUGOSLAV). FORD FOUNDATION PUBLIC ADMINISTRATION ADVISOR TO GRZ AND QUALIFIED LAWYER, ALAM SIMMANE, ALSO REGARDS CONTRACT AS EXTRAORDINARILY ONE-SIDED; HE SAYS HE AMAZED ANY US AGENCY WOULD BE ASSOCIATED WITH IT. BAD FAITH ON TAW SIDE HAS ALSO BEEN CHARGED BY RANKING OFFICIAL OF LOCAL COPPER COMPANY WHO CONTENTS IT WAS IMPOSSIBLE BECAUSE OF LABOR STRIKE FOR GM TO MEET DELIVERY DATES. PRESS HAS BEEN EQUALLY CRITICAL. COMBINED EFFECT OF THIS CRITICISM COULD EVENTUALLY ADVERSELY INFLUENCE THOSE MEMBERS OF CABINET AND CENTRAL COMMITTEE WHO ARE ALREADY NOT PARTICULARLY PRO-US IN THEIR OUTLOOK OR RECEPTIVE

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TO US TRADE AND INVESTMENT INTERESTS.  
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## Message Attributes

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